NO. A-783 (89-1690)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

vs.

CHARLES STEVEN ACEVEDO,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER STATEMENT OF QUESTIONS PRESENTED

1. Whether the Court of Appeals fully considered and correctly decided whether respondent's Fourth Amendment rights were violated when officers searched and seized without a warrant the brown paper lunch bag in respondent's automobile trunk.

2. Whether Chadwick, Sanders and Castleberry, were distinguishable from Ross so that the decision of the Court of Appeal was correctly decided in light of the facts of the instant case.

PARTIES TO PROCEEDINGS

Petitioners are the People of the State of California and the Respondent is CHARLES STEVEN ACEVEDO.

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Respondent, CHARLES STEVEN ACEVEDO, respectfully prays that a Writ of Certiorari be denied to review the judgment and opinion of the California Court of Appeal, Fourth Appellate District, Division Three, Civil No. G007480, issued on December 12, 1989.

OPINIONS BELOW

The opinion of the Court of Appeal in this case is reported at 216 Cal.App.3d 586, 265 Cal.Rptr. 23. It is also included in petitioner's Appendix A to the Petition for Writ of Certiorari.

The first order modifying the concurring opinion is reported at 216 Cal.App.3d 586, 265 Cal.Rptr. 23, and included in Petitioner's Appendix B to the Petition. The second order

modifying the concurring opinion is also reported at 216 Cal.App.3d 586, 265 Cal.Rptr 23, and is included in Appendix C to the Petition.

The order of the California Supreme Court denying the Petition for Review on direct appeal was entered in the Official Minutes of that Court and reported in the Official Advance Sheets of the California Supreme Court. The Minute Order is reproduced in Petitioner's Appendix E to the Petition for Writ.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition by invoking Title 28, United States Code Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The facts of the case are stated fully in the decision of the Court of Appeal in the State of California (see Petitioner's Appendix A, pages A-1 through A-4).

STATEMENT OF FACTS

See petitioner's Petition for Writ of Certiorari, pages 8 through 12.

REASONS FOR DENYING THE WRIT

There are two compelling reasons why the Petition should be denied.

First, the Court below fully considered and correctly decided the issue of whether the search of the paper lunch bag in the trunk of the vehicle belonging to respondent was justified under the automobile exception to the Fourth Amendment warrant requirement. Second, the decision below follows an unbroken line of authority and the Court's prior decisions are controlling .

I

THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED THE ISSUES

Petitioner propounds that in the case at bar the Court of Appeal failed to recognize that once the bag was placed in the automobile, it acquired the same degree of mobility as the vehicle itself.

Petitioner has relied on United States v. Ross, 456 U.S. 798 (1982) which justified a warrantless search of an automobile that was believed to have been transporting contraband and petitioner argues that Ross applies with equal force to any movable container that is believed to be carrying an illicit substance within an automobile. However, Ross states, at page 817, "Unlike Chadwick

and Sanders, in this case police officers had probable cause to search respondent's entire vehicle." Ross recognizes the distinction between probable cause to search the whole vehicle and probable cause to search a container within a vehicle.

The Court of Appeals recognized, considered and ruled on the basis of the existing law stating:

> We recognize the anomalous nature of the Ross-Chadwick dichotomy: If police have probable cause to believe contraband is concealed in a particular container, they must obtain a warrant before searching it, even when it is being stored in a vehicle. If the investigation has, for whatever reason, yet to focus on a particular container and there is only probable cause to believe the contraband is located somewhere in an automobile, officers may conduct a warrantless search of any container in the car that could reasonably conceal the evidence. People v. Acevedo, 216 Cal.App.3d 586 at 592.

The Acevedo court further relied on United States v. Salazar, 805 F.2d 1384 (9th Cir. 1986), in which officers saw "dealers" hand a brown shopping bag to Salazar who placed the bag in a locked car. Salazar was stopped as he drove away and the bag was seized and searched. Relying upon the decisions in United States v. Chadwick,

433 U.S. 1 (1977) and Arkansas v. Sanders, 442 U.S. 753, 761 n.8, 99 S.Ct. 2586, 2592 n. 8, 61 L.Ed.2d 235 (1979), the Salazar court concluded that a warrantless search of the bag was unlawful even though it was located in an automobile because:

> there is 'no greater need for warrantless searches of [containers] taken from automobiles than of [containers] taken from other places,' and that containers located in automobiles are not 'necessarily attended by any lesser expectation of privacy than is associated with [containers] taken from other locations.' 422 U.S. at 764, 99 S.Ct. at 2593. The Supreme Court has distinguished between searches of containers found in a car based upon probable cause that a specific container placed in a car contains contraband, and searches based upon a generalized belief that a car contains contraband somewhere inside. In the latter case, the entire vehicle, including closed containers found therein, may be searched to the same extent as if a magistrate had issued a warrant based on the probable cause relied on by the officers. Ross, 456 U.S. at 823, 102 S.Ct. at 2172. Where, prior to a search, officers have

probable cause to believe that a specific closed container holds contraband, however, they must obtain a search warrant before opening it, even though it is located in an automobile. 433 U.S.; see Ross, 456 U.S. at 813, 102 S.Ct. at 2166 (quoting Chief Justice Burger's concurrence in Sanders, 442 U.S. at 766-67, 99 S.Ct. at 2594). See also Castleberry v. State, 678 P.2d 720 (Okla.Crim.App. 1984), aff'd by equally divided Court sub nom. Oklahoma v. Castleberry, 471 U.S. 146, 105 S.Ct. 1859, 85 L.Ed.2d 112 (1985).

> Here, as in Sanders, the police officers could have taken the container seized with probable cause, along with the suspect, to the police station and obtained a warrant for search. See Sanders, 442 U.S. at 766, 99 S.Ct. at 2594. A closed paper bag shares the same degree of Fourth Amendment protection as the footlocker in Chadwick and the unlocked suitcase in Sanders. Id. at pp. 1397-1398.

Therefore, the court below fully considered and correctly decided the issues.

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II

THE DECISION BELOW FOLLOWS AN UNBROKEN LINE OF AUTHORITY

As is clear from the Acevedo opinion, the Court ruled that an officer could not open the lawfully seized bag without first obtaining a warrant. "That is the rule of a line of cases headed by United States v. Chadwick, 433 U.S. 1 (1977) . . . . " People v. Acevedo, 216 Cal.App.3d 586 at 590.

In Chadwick there was a double-locked footlocker which had been transported on a train and which narcotics agents had probable cause to believe contained narcotics. The footlocker was loaded into an automobile after being unloaded from the train after which the agents made an arrest. More than one hour elapsed from the time of arrest and the search of the footlocker. The Chadwick court held that:

> In our view, when no exigency is shown to support the need for an immediate search, the Warrant Clause places the line at the point where the property to be searched comes under the exclusive dominion of police authority. Respondents were therefore entitled to the protection of the Warrant Clause with the evaluation of a neutral magistrate, before their privacy interests in the contents of the footlocker were invaded. United States v. Chadwick, 433 U.S. 1 (1977) at pp. 15-16.

Sanders involved a warrantless search of a suitcase that police officers believed contained marijuana. An arrest was made by officers following a short chase of the respondents leaving an airport in a taxicab. Prior to the arrest officers searched the trunk of the taxicab without obtaining permission. The suitcase was found and searched. It contained marijuana. The Sanders court held that:

> We conclude that the State has failed to carry its burden of demonstrating the need for warrantless searches of luggage properly taken from automobiles. A closed suitcase in the trunk of an automobile may be as mobile as the vehicle in which it rides. But as we noted in Chadwick, the exigency of mobility must be assessed at the point immediately before the search - after the police have seized the object to be searched and have it securely within their control. See 433 U.S. at 13. Once police have seized a suitcase, as they did here, the extent of its mobility is in no way affected by the place from which it was taken. Accordingly, as a general rule there is no greater need for warrantless searches of luggage taken from automobiles than of luggage taken from other places.

. . . In sum, we hold that the warrant requirement of the Fourth Amendment applies to personal luggage taken from an automobile to the same degree it appl'es to such luggage in other locations. Thus, insofar as the police are entitled to search such luggage without a warrant, their actions must be justified under some exception to the warrant requirement other than that applicable to automobiles stopped on the highway. Where - as in the present case - the police, without endangering themselves or risking loss of the evidence, lawfully have detained one suspected of

> criminal activity and secured his suitcase, they should delay the search thereof until after judicial approval has been obtained. In this way, constitutional rights of suspects to prior judicial review of searches will be fully protected. 422 U.S. at pp. 765-766.

The search of suitcases and a Band-Aid box was the subject of the Castleberry case wherein the defendants were arrested contemporaneously with the search. In Castleberry the Court held:

> The case at bar clearly falls within the Chadwick-Sanders line of cases. The suspected locations of the contraband were the suitcases

> and the Band-Aid box which Castleberry threw into the car. Accordingly, we hold that the motion to suppress was erroneously overruled. The officers should have detained the containers until a search warrant had been obtained. 678 P.2d at p. 724.

Petitioner further asserts that it is not rational to make the distinction between whether officers had knowledge that the contraband was in a specific container in a specific part of the vehicle as opposed to being in the vehicle generally. However, it is not only rational, but the Supreme Court created that exception when Ross was decided. The Ross rule carved out an exception to Chadwick-Sanders by allowing the officers to search the entire vehicle, including the containers when they had probable cause to believe that narcotics were being sold from the trunk of the vehicle. The Ross court recognized the Chadwick-Sanders rule stating at page 814:

> It is clear, however, that in neither Chadwick nor Sanders did the police have probable cause to search the vehicle or anything within it except the footlocker in the former case and the green suitcase in the latter.

Thus, it is abundantly clear that the Court of Appeal in Acevedo properly considered and distinguished Ross from Chadwick,

Sanders and Salazar. In addition, in Acevedo the court specifically recognized the Ross-Chadwick dichotomy by stating:

> If police have probable cause to believe contraband is concealed in a particular container, they must obtain a warrant before searching it, even when it is being stored in a vehicle. If the investigation has for whatever reason, yet to focus on a particular container and there is only probable cause to believe the contraband is located somewhere in an automobile, officers may conduct a warrantless search of any container in the car that could reasonably conceal the evidence. 216 Cal.App.3d at 592.

In Oklahoma v. Castleberry, 471 U.S. 146 (1985), the distinction between a known specific container and contraband somewhere in the car surfaces again. Even though the United States Supreme Court divided equally, it affirmed the decision to suppress evidence obtained in similar conditions as in the case at bar; to wit, police officers searched and seized a blue suitcase in the trunk of a car, without a warrant, knowing it contained narcotics.

Finally, in United States v. Johns, 469 U.S. 478 (1985), the distinction between Chadwick and Ross was again recognized by this Court. In Johns, officers seized trucks and searched their containers without a warrant because the customs officers had

probable cause to believe that the trucks contained contraband because of the smell emanating from them. Ibid. at pp. 482-483. In Johns, police had probable cause to believe that the vehicle, compared to the footlocker in the trunk of the car in Chadwick, contained contraband.

This Court has recognized the Acevedo factual situation since Chadwick and has consistently affirmed it. Therefore, this is not a new or novel set of circumstances and the Writ of Certiorari must be denied.

III

PRIOR DECISIONS ARE CONTROLLING

Petitioner urges that there is a need for straightforward and predictable rules. Relying on Ross, supra, petitioner's argument that there is an overall existence of probable cause to search this vehicle and its contents is pure fantasy.

Furthermore, the "bright line" petitioner is seeking has already been set forth according to specific factual distinctions in Castleberry, Salazar, Chadwick and Johns. There is no reason to overrule Ross because Ross is still good law as it applies to the same set of facts as Ross -- where officers do not have sufficient information or knowledge that contraband may be in a specific container in a vehicle but have probable cause to believe the vehicle itself contains contraband, they may search it without a warrant.

Lastly, petitioner argues that the rule created by the Court

of Appeal will ensnare officers and citizens in time consuming and unnecessary waits to procure warrants. Petitioner fails to recognize the reason for the Fourth Amendment. It is the right of the people to be secure in their persons, homes, papers, and effects against unreasonable searches and seizures.

The line of cases relied upon by the Acevedo Court of Appeal are controlling under the circumstances presented by this case. Thus, there is no need for review of this matter.

CONCLUSION

WHEREFORE, respondent prays that this Court deny the Writ of Certiorari.

Respectfully submitted,

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Attorney for Respondent